

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MACLAREN EUROPE LIMITED,

Plaintiff,

v.

ACE AMERICAN INSURANCE
COMPANY a/k/a ACE USA,

Defendant.

Civil Action No. 11-cv-04688-HB

DECLARATION OF JOSEPH K. POWERS
IN SUPPORT OF MOTION TO DISMISS

JOSEPH K. POWERS, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am a member of the law firm Sedgwick LLP, 125 Broad Street, 39th Floor, New York, New York 10004-2400, and represent Defendant ACE American Insurance Company ("ACE") (improperly sued as "ACE American Insurance Company a/k/a ACE USA") in this matter. I am in good standing of the Bar of New York, and am duly admitted to practice before all courts in that jurisdiction. Additionally, I am admitted to practice in the United States District Court for the Southern and Eastern Districts of New York, and the United States Court of Appeals for the Second Circuit.

2. The statements made herein are true based upon my own personal knowledge and or upon information and belief.

3. Attached hereto as "Exhibit A" is a true and complete copy of public corporate records maintained by the Companies House, an executive agency of the Department for Business, Innovation and Skills in the British Government.

4. Attached hereto as "Exhibit B" is a true and complete copy of corporate records maintained by the State of Connecticut.

5. Attached hereto as "Exhibit C" is a true and complete copy of ACE International Advantage Commercial Insurance Policy No. PHFD36824268 issued to Maclaren Europe and Maclaren Hong Kong for the policy period from April 10, 2006 to April 10, 2007.

6. Attached hereto as "Exhibit D" is a true and complete copy of the cover letter from ACE to Program Brokerage confirming that the Policy was issued by ACE's Wilmington, Delaware office.

7. Attached hereto as "Exhibit E" is a true and complete copy of the U.S. Postal Service Record confirming the address of Maclaren USA.

8. Attached hereto as "Exhibit F" is a true and complete copy of the evidence of mailing issued by the United States Post Office in Wilmington, Delaware.

9. Attached hereto as "Exhibit G" is a true and complete copy of the Domestic Mail Manual, issued by the United States Postal Service.

Dated: New York, New York
July 28, 2011

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.



Joseph K. Powers, Esq.

Exhibit D



ace usa

ACE USA
International Advantage
Routing 1275
1 Beaver Valley Road
2 West
Wilmington, DE 19803

800.204.0518 tel
302.476.6456 fax
nba@ace-ina.com

Program Brokerage

1065 Ave of the America
New York, NY 10018

RE: McLaren Europe Limited & McLaren Hong
PHFD36824268

Dear Cynthia:

Enclosed is the renewal for the above named insured.

Our account team at ACE USA, Advantage Business Center, would like to thank you for choosing ACE USA to service your client's needs.

The broker copy of the policy, Premium Payments and Claim Reporting procedures immediately follow this letter.

On the right hand side is the insured's policy. In the back pocket is the ACE USA's Privacy position, now required by law, to be provided to you with each new business policy or each renewal term change.

Our goal is to provide you and your client with continuous quality service. After reviewing your document(s), if further assistance is needed, contact us at 1.800.204.0518.

Contact information:

Underwriter: Deborah Worek

Underwriting Assistant: Debbie Floyd

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ace usa

Dear International Producer:

PREMIUM COLLECTION POLICY

It is expected that producers bill from ACE's bound quote letter for New Business and automatically for renewals. PREMIUM IS DUE TO ACE 30 DAYS AFTER THE EFFECTIVE MONTH OF THE POLICY.

Example: policies effective any day in the month of May are due June 30.

Any transaction late or back dated will be due immediately.

Manual bills may accompany your policy for late, unusual or when billing premium and taxes on foreign issued policies when the premium is being collected in the U.S. These manual bills supercede any statement entry.

A premium statement will be sent to your accounting department the first day of every month. Keeping ACE abreast of any address changes will prevent unnecessary cancellations.

ACE U.S.I. Advantage will send to the producer, 10 day notice of cancellation upon notification of non-payment by our accounting department. Immediate payment will be necessary for reinstatement.

WHERE TO PAY YOUR CLIENT'S PREMIUM THAT IS BILLED TO YOU

SEND CHECKS THROUGH REGULAR MAIL

PAYABLE TO:

**ACE USA
DEPT CH 10678
PALATINE, IL 60055-0678**

OVERNIGHT MAIL

PAYABLE TO:

**ACE USA
ACE American Insurance Company
5505 N. CUMBERLAND AVE
SUITE 307
CHICAGO, IL 60656-1471
ATTN: BOX #10678**

**OUR ACCOUNTING DEPARTMENT IS LOCATED WILMINGTON, DELAWARE.
FOR ANY QUESTIONS REGARDING YOUR PREMIUM STATEMENT, PLEASE
CONTACT DENISE MILLER AT 302.476.6065 OR THROUGH OUR CUSTOMER
SERVICE DESK AT 1.800.204.0518.
FOR INFORMATION REGARDING WIRE TRANSFERS,
PLEASE CONTACT DENISE DIRECTLY.**

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ace usa

ACE USA PRIVACY POLICY

ACE USA values its relationship with you and your customers or employees. Protecting the privacy of information we have about your customers or employees is of great importance to us. We want you to understand how we protect the confidentiality of that information as well as how and why we use and disclose it. The following provides details of our practices and procedures for protecting the security of nonpublic personal information both while you are our customer and when you are no longer our customer. This privacy policy applies to the companies listed below.

INFORMATION WE COLLECT

The information we collect about your employees or customers will vary depending on the type of product or service being provided to them, and may include:

- Information we receive from you, your customers, or employees such as name, address, age, phone number, social security number, assets, income, or beneficiaries;
- Information about transactions your employees or customers have with us, with our affiliates, or with others, such as policy coverage, premium, payment history, motor vehicle records; and
- Information we receive from a consumer reporting agency, such as credit histories.

INFORMATION WE DISCLOSE

We do not disclose any personal information to anyone except as is necessary in order to provide our products or services or otherwise as we are required or permitted by law.

YOUR RIGHT TO VERIFY THE ACCURACY OF INFORMATION WE COLLECT

Keeping our information accurate and up to date is important to us. Your customers or employees may see and correct personal information that we collect about them except for information relating to a claim or a criminal or civil proceeding.

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HOW TO OBTAIN CLAIMS HELP

In the event of a claim, suit or loss under this policy, contact your agent or broker and, during normal business hours, call:

ACE USA – U.S. International Claims
1 Beaver Valley Road, 4 East
P.O. Box 15394
Wilmington, Delaware 19850

Direct Telephone: 302.476.6400
Toll Free in the U.S.: 1.866.809.0396 ext. 6400
Fax Number: 302.476.6907
E-mail: USI-FirstNoticeofLoss@ace-ina.com
(This e-mail address is for new claim reporting only.)

For after hours emergency claim reporting call:

Direct Telephone: 1.770.810.1130
Toll Free in the U.S.: 1.800.523.9254

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ace-usa

U.S. Treasury Department's Office Of Foreign Assets Control ("OFAC")

Advisory Notice To Policyholders

No coverage is provided by this Policyholder Notice nor can it be construed to replace any provisions of your policy. You should read your policy and review your Declarations page for complete information on the coverages you are provided.

This Notice provides information concerning possible impact on your insurance coverage due to directives issued by OFAC. Please read this Notice carefully.

The Office of Foreign Assets Control (OFAC) administers and enforces sanctions policy, based on Presidential declarations of "national emergency". OFAC has identified and listed numerous:

- Foreign agents;
- Front organizations;
- Terrorists;
- Terrorist organizations; and
- Narcotics traffickers;

as "Specially Designated Nationals and Blocked Persons". This list can be located on the United States Treasury's web site - <http://www.treas.gov/ofac>.

In accordance with OFAC regulations, if it is determined that you or any other insured, or any person or entity claiming the benefits of this insurance has violated U.S. sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, this insurance will be considered a blocked or frozen contract and all provisions of this insurance are immediately subject to OFAC. When an insurance policy is considered to be such a blocked or frozen contract, no payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments also apply.

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Exhibit E.

USPS.com® - ZIP Code Lookup

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Look Up a ZIP Code™

[By Address](#)[By Company](#)[Cities by ZIP Code](#)**You entered:**[Look up another ZIP Code »](#)

MacLaren USA, Inc.
4 TESTA PLACE
NORWALK, CT

Here's the full address, using standard abbreviations and formatting. However, we can't verify that this is the actual location of the business. Double-check the address before making here...

MACLAREN USA, INC.
4 TESTA PL.
NORWALK, CT 06854-4638

[Show Mailing Industry Details](#)**LEGAL**

[Privacy Policy](#) »
[Terms of Use](#) »
[FOIA](#) »
[No FEAR Act/EO Data](#) »

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[Postal Inspectors](#) »
[Inspector General](#) »
[Postal Explorer](#) »

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Exhibit F

From: Donahue, William J [mailto:William.Donahue@acsgroup.com]
Sent: 12 February 2009 13:08
To: Martin Melville
Cc: Gopel Kati (LSB); John Shad; Brian Wells (Acels)
Subject: RE: Maderin FYI: Genima Kennedy v Maderin - claim 18/9/06 ACE USA Policy PHFD34824288

Dear Martin:

The policy was cancelled by ACE for non-payment of premium.
(See attached direct notice of cancellation along with the certified mailing receipt)

Any further questions, please contact me.

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ace usa

CANCELLATION NOTICE

ACE AMERICAN INSURANCE COMPANY

You are notified that we are herewith cancelling your policy indicated below, in accordance with its terms, and all liability thereunder will terminate, effective as stated below. Unearned premium, if any (if not tendered), will be refunded on demand.

Policy Number: PHFD36824268

Prepared by the ACE office located:

1 BEAVER VALLEY ROAD

WILMINGTON, DE 19803

Policy Term: 04/10/06 TO 04/10/07

Contact telephone number: 800.204.0518

Effective date of Cancellation: July 10, 2006

Notice is null and void if payment is received by effective date.

Cancelled location if different from insured's address:

INSURED NAME AND ADDRESS:

Maclaren Europe Limited & Maclaren Hong Kong Limi

**4 Testa Place
Nowalk, CT 06854**

PRODUCER NAME AND ADDRESS:

Program Brokerage

**1066 Ave of the America
New York, NY 10018**

MORTGAGEE OR LOSS PAYEE:

MORTGAGEE OR LOSS PAYEE:

RETURN PREMIUM: \$

CANCELLATION BASIS: PRO RATA

CANCELLATION FACTOR:

0.751

DUE TO NON PAYMENT

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Exhibit G


[USPS Home](#) | [Postal Explorer Home](#)
[DMM TOC](#) > [500 Additional Mailing Services](#)

503 Extra Services

- 1.0 Extra Services for Express Mail
- 2.0 Registered Mail
- 3.0 Certified Mail
- 4.0 Insured Mail
- 5.0 Certificate of Mailing
- 6.0 Return Receipt
- 7.0 Restricted Delivery
- 8.0 Adult Signature
- 9.0 Return Receipt for Merchandise
- 10.0 Delivery Confirmation
- 11.0 Signature Confirmation
- 12.0 Collect on Delivery (COD)
- 13.0 Special Handling
- 14.0 Confirm Service
- 15.0 Money Orders

1.0 Extra Services for Express Mail

1.1 Available Services

1.1.1 Mailing Receipt

A receipt showing the time and date of mailing must be provided to the mailer on acceptance of Express Mail by the USPS. This receipt is a copy of the multipart Express Mail label affixed to the mailpiece and serves as evidence of mailing. Mailers authorized to present Express Mail under Express Mail Manifesting procedures in 705.2.0 must use a one-ply label and retain the verification manifest as the mailing receipt. Mailers using an online application to create their Express Mail label must retain the customer online record or shipping history as evidence of mailing.

1.1.2 Proof of Delivery

Proof of delivery information for Express Mail is available as follows:

- a. Individual requests by article number can be retrieved at www.usps.com or by calling 1-800-222-1811. A proof of delivery letter is provided via fax or mail.
- b. Bulk proof of delivery letters are available only to mailers using Express Mail Manifesting service and can be obtained in CD-ROM or Signature Extract File formats. For additional information see Publication 80, *Bulk Proof of Delivery Program*.

1.1.3 Return Receipt

Return receipt service (receive by mail (Form 3811) option only) under 6.0 may be purchased for Express Mail. The return receipt serves as evidence of delivery. The fee paid for this service does not insure the mailpiece against loss or damage. If a return receipt is requested, the mailer must show a

from Form 3877 that are not applicable to insured mail. The mailer must present the books with the articles to be mailed at a Post Office. The sheets become the mailer's receipts. All entries made on firm sheets must be made by typewriter, ink, or ballpoint pen. Alterations must be initialed by the mailer and accepting employee. All unused portions of the addressee column must be obliterated with a diagonal line.

4.4 Bulk Insurance for Standard Mail

4.4.1 Eligibility

To mail at the bulk insured service prices, mailers must obtain an authorization under 4.4.2 and must meet the following criteria:

- a. Enter mailings of insured articles under an approved manifest mailing system agreement.
- b. Mail a minimum of 10,000 insured articles annually. To meet the minimum volume requirement, mailers may total all insured articles mailed at multiple locations.
- c. Provide a printed Form 3877 or facsimile and a copy of Form 3877 on a disk or other electronic medium.
- d. Effective at a future date, provide a soft (electronic) copy of Form 3877 in a new, approved format.
- e. Mailings on which bulk insurance is requested must have postage and fees paid with permit imprint under a manifest mailing system (705.2.0).

4.4.2 Authorization

Mailers must apply for authorization to mail at the bulk insured service prices through their local postmaster or designee by completing the customer portion of the bulk insured service verification form. The postmaster or designee will verify on this form that the mailer meets the requirements in 4.4.1. If the mailer does not meet the requirements, the application will be denied. If the mailer meets the requirements in 4.4.1, the postmaster or designee will certify on the bulk insured service verification form that the mailer qualifies and forward the form to the manager of Claims Processing at the St. Louis Accounting Service Center (ASC). After reviewing the information, the ASC will notify the postmaster of their concurrence of the application and provide a range of claim numbers to be used by the mailer for filing claims. The postmaster or designee will then provide the customer with the approval of the application and with information needed to file claims, including the assigned claim numbers. At a future date, electronic filing of indemnity claims will become mandatory. Prior to mandatory electronic claims filing, customers will be provided with the format instructions for the new electronic (soft copy) of Form 3877 and instructions for electronic filing of indemnity claims.

4.5 Delivery

An item insured for \$200.00 or less receives a delivery scan. An item insured for more than \$200.00 receives a delivery scan and the recipient's signature. Delivery of insured mail is subject to 508.1.0, *Recipient Options*, and 508.2.0, *Conditions of Delivery*.

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5.0 Certificate of Mailing

5.1 Certificate of Mailing Fees

In addition to the correct postage, the applicable certificate of mailing fee must be paid for each article on Form 3817 or for additional copies of either Form 3817 or Form 3877. The correct fee, based on the quantity mailed, must be paid in addition to postage for mailings of identical pieces of First-Class Mail (including Priority Mail) and Package Services. Mailers paying with ordinary stamps, precanceled stamps, or meter stamps reported on Form 3606 must affix stamps or meter stamps to pay the bulk certificate of mailing fees. Mailers

using Form 3877 with a permit imprint mailing can pay certificate of mailing fees with permit imprint. See Notice 123—Price List.

5.2 Basic Information

5.2.1 Description

Certificate of mailing service provides evidence that mail has been presented to the USPS for mailing. Certificate of mailing service does not provide a record of delivery.

5.2.2 Eligible Matter—Single Piece

Form 3817 is used for a certificate of mailing for a First-Class Mail, Priority Mail (excluding Critical Mail) or Package Services single mailpiece. Facsimile forms also may be used.

5.2.3 Three or More Pieces

When requesting a certificate of mailing for three or more pieces presented at one time, a mailer may use Form 3877 (firm sheet) or a facsimile, subject to payment of the applicable fee for each item listed. Facsimile Forms 3877 must contain the same information as the postal-provided form. The sheets of the books become the sender's receipts. All entries made in firm sheets must be made by typewriter, ink, or ballpoint pen. Computer-generated firm sheets that contain the same information as Form 3877 also may be used. Any alterations must be initialed by the mailer and accepting employee. All unused portions of the addressee column must be obliterated by drawing a diagonal line through them.

5.2.4 Eligible Matter—Bulk Quantities

Form 3606 is used for a certificate of bulk mailing to specify the number of pieces mailed. This certificate is provided only for a mailing of identical pieces of First-Class Mail, Priority Mail (excluding Critical Mail), Standard Mail, and Package Services. This certificate states only the total number of articles mailed and must not be used as an itemized list. A certificate of mailing cannot be issued for a bulk mailing paid with a permit imprint.

5.2.5 Mailer Preparation

A certificate of mailing must be completed by the mailer, using a typewriter, ink, or ballpoint pen. Individual and firm sheet certificates must show the names and addresses of the sender and addressee and may show the amount of postage paid. The mailer may also place identifying invoice or order numbers on the certificate.

5.2.6 Additional Services

The following services may be combined with certificate of mailing on single pieces if the applicable standards for the services are met and the additional service fees are paid:

- a. Parcel airlift service (PAL).
- b. Special handling.

5.3 Presentation

5.3.1 Rural Carriers

A mailer on a rural route or at a nonpersonnel rural unit may provide mail to the rural carrier with the fee for the certificate. The carrier obtains the certificate at the Post Office, attaches the stamps, cancels them by postmark, and delivers the certificate to the mailer on the next trip.

5.3.2 Quantity Mailings

When the number of articles ordinarily presented justifies such action, the mailer must comply with these standards:

- a. When the mailer wants individual certificates on Form 3817, the forms must be affixed by the stub to the pieces, or the forms must be numbered consecutively and fastened together.
- b. When the mailer describes and lists the pieces on firm sheets or approved forms, but does not present the pieces in the order shown on the sheets,

the mailer must consecutively number each entry and lightly number each piece to show the sheet and line number on which described.

5.3.3 After Mailing

To obtain an additional certificate after mailing, the mailer must present the original certificate and an additional certificate endorsed "Duplicate" or a copy showing the original dates of mailing. The additional certificate must be postmarked to show the current date.

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6.0 Return Receipt

6.1 Return Receipt Fees

6.1.1 Fees

Return Receipt fee is in addition to postage and other fees, and is charged per piece. See Notice 123—Price List.

6.1.2 Fee and Postage

The applicable fee for return receipt service must be paid in addition to postage and other fees. For purposes of computing postage, the weight of the return receipt is *excluded* from the weight of the mailpiece to which it is attached.

6.1.3 Refund

Return receipt fees are refunded only if the USPS fails to furnish a return receipt.

6.2 Basic Information

6.2.1 Description

Return receipt service provides a mailer with evidence of delivery (to whom the mail was delivered and date of delivery), along with information about the recipient's actual delivery address. A mailer purchasing return receipt service at the time of mailing may choose to receive the return receipt by mail and/or electronically. The electronic option is not available for items mailed to APO or FPO addresses or U.S. territories, possessions, or Freely Associated States listed in 608.2.0. A mailer purchasing return receipt service after mailing may choose to receive the proof of delivery record by fax, mail, or electronically. Electronic return receipts requested at the time of mailing also are available in bulk to mailers using privately printed Certified Mail, Registered Mail, insured mail (for more than \$200.00), or COD labels. Bulk delivery information can be obtained in CD-ROM or signature extract file formats. For additional information, see Publication 80, *Bulk Proof of Delivery Program*.

6.2.2 Eligible Matter

Return receipt service is available for:

- a. Express Mail (receive by mail (Form 3811) option only).
- b. First-Class Mail and Priority Mail (excluding Critical Mail) when purchased at the time of mailing with Certified Mail, COD, insured mail (for more than \$200.00), or Registered Mail service.
- c. Standard Mail prepared as parcels when bulk insurance (for more than \$200.00) is purchased at the time of mailing.
- d. Package Services when purchased at the time of mailing with COD or insured mail (for more than \$200.00).

6.2.3 Endorsement

Mail for which return receipt service is requested by mail (Form 3811) must be endorsed "Return Receipt Requested" above the delivery address and to the right of the return address. No endorsement is required on mail for which electronic return receipt service is requested or is provided in bulk via a signature extract file or a CD-ROM.